

To: Kim Wasserman, Chair, Illinois Environmental Justice Commission  
Chris Pressnall, IL EPA Representative, Illinois Environmental Justice Commission

From: Keith Harley, Member, Illinois Environmental Justice Commission  
John Stout, Law Clerk, Chicago Legal Clinic, Inc.

Date: November 25, 2019

Re: Recommendations for IL EPA for Illinois's ACE Plan

This memo identifies critical omissions in U.S. EPA's Affordable Clean Energy Rule ("ACE") and recommends responsive actions that IL EPA should incorporate into its ACE implementation activities.

ACE lacks meaningful environmental justice provisions. The U.S. EPA's Final Regulatory Impact Analysis ("RIA") lacks quantitative analysis of potential significant, adverse and disproportionate risks to low-income and minority communities. In turn, ACE provides no guidance to address places where risks of harm to human health and environmental quality are concentrated. ACE also fails to provide guidance to states to ensure environmental justice communities have public participation opportunities.

U.S. EPA anticipates a high degree of state discretion in ACE implementation. Consequently, Illinois has a significant opportunity to address ACE's failure to address environmental justice. IL EPA should conduct unit level emissions modeling to assess the potential impacts of ACE on environmental justice communities. Based on this analysis, IL EPA should implement ACE to avoid significant, adverse effects on human health and environmental quality. In addition, IL EPA should engage with environmental justice communities to ensure meaningful public participation in the design and implementation of its ACE plan.

### ***ACE's Lack of Environmental Justice Guidance***

ACE sets emission guidelines for states to develop and submit their own implementation plans to the EPA. A key aspect of ACE is its BSER, which is based on heat rate improvements for existing coal-fired power plants.<sup>1</sup> It is "the states' responsibility" to create a plan and "develop standards of performance that reflect the application of the BSER."<sup>2</sup> This minimal guidance is the furthest the ACE rule goes, as there is no requirements for states to account for environmental justice impacts. Despite U.S. EPA's failure to address environmental justice or provide strict direction to states, the freedom afforded to Illinois to create its own ACE plan allows for EJ communities to be accounted for in a meaningful way.

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<sup>1</sup> [https://www.epa.gov/sites/production/files/2019-06/documents/bser\\_and\\_eg\\_fact\\_sheet\\_6.18.19\\_final.pdf](https://www.epa.gov/sites/production/files/2019-06/documents/bser_and_eg_fact_sheet_6.18.19_final.pdf)

<sup>2</sup> <https://www.federalregister.gov/documents/2019/07/08/2019-13507/repeal-of-the-clean-power-plan-emission-guidelines-for-greenhouse-gas-emissions-from-existing>

### ***Shortcomings of the Regulatory Impact Analysis***

In the RIA, the U.S. EPA declined to conduct a meaningful, quantitative analysis of environmental justice impacts.<sup>3</sup> The illustrative policy scenario used in the RIA had numerous flaws that limited the analysis put forth by the U.S. EPA. The illustrative policy scenario used in the state and unit level emission models compared GHG emissions with no control plan with potential GHG emissions under ACE.<sup>4</sup> The illustrative policy scenario was extremely speculative as there is no way to predict what controls, or lack of, each state would implement in their ACE plan. This amount of speculation created by the illustrative policy scenario makes the data put forth in the U.S. EPA's quantitative analysis essentially meaningless.

Other flaws in the RIA were that: 1) it failed to account for possible risks emissions among minority, low-income, and indigenous populations in its models and 2) it did not account for the impact of co-pollutants in any meaningful way.<sup>5</sup> The RIA failed to “conclude whether this rule will have disproportionate impacts on EJ communities” in its analysis of its illustrative policy scenario.<sup>6</sup> The lack of certainty is deeply concerning and shows that the U.S. EPA finalized ACE without any determination on whether the rule could have an adverse, disproportionate, and disparate impact on environmental justice communities. It falls to the Illinois EPA to make up for the final rule and the RIA's shortcomings by conducting its own regulatory impact analysis that accounts for EJ communities and can create unit level emission models that provide more certainty.

### **RECOMMENDATIONS FOR IL EPA**

To protect its own EJ communities under ACE, the IL EPA must conduct a quantitative analysis driven by an effective proximity analyses and unit level emission models to determine: 1) the impact of its ACE implementation plan on environmental justice communities; 2) the impact of aging coal-fired power plants staying operational longer due to heat-rate efficiency improvements; and 3) the impact of co-pollutants as well as GHG emissions on the health of environmental justice communities. EJ communities must be engaged throughout the entire process, allowing them to have a role in crafting a state plan that does not have significant adverse and disproportionate impacts on their communities.

### ***Proximity Analyses and Emission Modeling***

The IL EPA must use its own toolkit to conduct proximity analyses and create unit level emissions models that provide meaningful data. It is essential that IL EPA determine where its EJ communities are located around its operating coal fired power plants and the impact those plants will have on EJ communities. The analysis must account for all plant-level improvements that could be part of an Illinois implementation plan and account for any expected increases in power plant emissions.<sup>7</sup> An effective proximity analysis would provide detailed demographic

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<sup>3</sup> [https://www.epa.gov/sites/production/files/2019-06/documents/utilities\\_ria\\_final\\_cpp\\_repeal\\_and\\_ace\\_2019-06.pdf](https://www.epa.gov/sites/production/files/2019-06/documents/utilities_ria_final_cpp_repeal_and_ace_2019-06.pdf) – pg. 5-5 – 5-8

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 5-8

<sup>6</sup> *Id.*

<sup>7</sup> Clean Power Plan Final Rule (CPP) at 1322

information on the communities located within a determined radius of each affected power plant in the state.<sup>8</sup>

The IL EPA analysis must include unit level emissions modeling that accounts for: 1) available air quality monitoring data and information from air quality models; and 2) information about local health vulnerabilities, such as asthma rates or access to healthcare in overburdened communities.<sup>9</sup> Conducting a thorough quantitative analysis with strong unit level emissions models would go beyond the surface level analysis conducted by the U.S. EPA and ensure that Illinois implements a plan that best protects EJ communities that are directly and indirectly impacted by the state's coal-fired power plants.

### ***Impact of Extending the Life of Older Coal Plants***

The IL EPA must conduct an analysis of the impact of extending the life of its aging plants through any heat rate efficiency improvements. Emissions increases could occur if modified units can operate at greater capacity, more frequently or for a longer lifespan. These aging units may also emit increased levels of other regulated pollutants. As a state with numerous aging plants, Illinois needs to analyze the cumulative public health impacts from GHG and co-pollutants that would be emitted by these plants. A proper analysis of the above factors would ensure that these plants do not continue to operate at the cost of public health, especially plants that are adjacent to environmental justice communities such as the Waukegan Generating Station.<sup>10</sup>

### ***Analysis of Co-Pollutant Impacts***

In both ACE and the RIA, the U.S. EPA failed to determine if the rule would lead to adverse health impacts on environmental justice communities through an increase of co-pollutants.<sup>11</sup> An effective quantitative analysis should also estimate the potential impact of co-pollutants on environmental justice communities. The IL EPA must analyze any short- and long-term air quality condition in environmental justice communities arising from emissions of non-GHG regulated pollutants from its coal fired power plants.

### ***Community Engagement in State Plan Development***

IL EPA must ensure that it engages with environmental justice communities during the development of its state plan. The U.S. EPA website states that “[m]eaningful involvement means: (1) [p]eople have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) [t]he public's contribution can influence the regulatory agency's decision; (3) [c]ommunity concerns will be considered in the decision-making process; and (4) Decision makers will seek out and facilitate the involvement of those potentially affected.<sup>12</sup>” By following these guidelines, the IL EPA can ensure that EJ

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> <https://echo.epa.gov/detailed-facility-report?fid=110000430178>

<sup>11</sup> [https://www.epa.gov/sites/production/files/2019-06/documents/utilities\\_ria\\_final\\_cpp\\_repeal\\_and\\_ace\\_2019-06.pdf](https://www.epa.gov/sites/production/files/2019-06/documents/utilities_ria_final_cpp_repeal_and_ace_2019-06.pdf) – page 5-8

<sup>12</sup> <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>

communities are aware and engaged in all aspects of the process, from the meaningful EJ analysis to the rollout of a final state implementation plan.

IL EPA should fully engage with communities and other stakeholders during all aspects of plan development. Meaningful engagement includes outreach to vulnerable communities, sharing information and soliciting input on state plan development and on any accompanying assessments such as those described above, and selecting methods for engagement to support communities' involvement at critical junctures in plan formulation and implementation.<sup>13</sup> This should include relaying the results of emissions modeling and any other quantitative analysis in a format that would be accessible by the general public and EJ communities. IL EPA should also conduct outreach meetings, which could include public hearings or listening sessions, before the initial plan is submitted. These meetings should provide all relevant information about the proposed state plan in all appropriate languages in advance of their public hearings and at their public hearings.<sup>14</sup> Full community engagement would allow environmental justice communities and organizations to influence policies that would protect their health and well-being.

## CONCLUSION

Illinois needs to ensure that environmental justice communities do not face significant adverse and disproportionate impacts from coal fired power plants under ACE. A quantitative analysis that includes proximity analyses and emission modeling would be effective in determining the cumulative impact of any potential implementation plan. EJ communities and stakeholders must be meaningfully engaged so they are aware of the impacts of any potential plan and can have a significant role in crafting the state plan. The freedom afforded by ACE allows Illinois to go above and beyond its requirements under ACE in using its capabilities to protect its EJ communities in creating its state implementation plan.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*